



State of Wisconsin • DEPARTMENT OF REVENUE

DIVISION OF STATE AND LOCAL FINANCE • BUREAU OF UTILITY AND SPECIAL TAXES • 125 South Webster Street • P.O. Box 8933 •
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REAL ESTATE TRANSFER NEWS

June 1999

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Division of State & Local Finance
Bureau of Utility & Special Taxes
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933

This newsletter may be found on the Internet at <http://www.dor.state.wi.us>. From there, look under "What's New, Real Estate Transfer Info."

1Q. Has the Department changed its requirement of filing a real estate transfer return and payment of the transfer fee on mineral and timber rights?

- A.** No, our position is the same. Whenever there is a conveyance of mineral or timber rights, a transfer return is required since it is a conveyance of real estate per s. 77.21(1m), Stats., and a transfer fee is required unless specifically exempt from fee under s. 77.25, Stats. Note that any type of document, lease, assignment of lease, deed or any other instrument that conveys a mineral or timber interest is subject to return and fee. The following are reprinted from prior Newsletters regarding mineral and timber right conveyances:

RETN, February 1984:

Q6. Are exploration and prospecting agreements with options to lease between landowners and others subject to the fee and return?

- A.** No, however, the executed future agreement would be subject to the form and fee. This type of lease is not the exempt lease as referred to in s. 77.21(1), Stats. It is an agreement for obtaining a real property interest in that land.

RETN, June 1988:

Q7. Are conveyances of mineral and timber rights subject to a return and fee?

- A.** Yes.

RETN, January 1992:

Q20. Is a recorded contract or deed for the sale of topsoil subject to a return and fee?

- A.** Yes, as are mineral deeds and sales of standing timber.

2Q. I want to file a "Termination of Lease" since we have closed the gravel pit prior to the terms of the lease. Do I need a transfer return?

- A.** No. The termination of a lease does not convey an interest in real estate. If the document does not clearly state that this is a termination of a lease, you must include the statement that "this is a termination of a lease less than 99 years and not a conveyance per s. 77.21(1), Stats."

3Q. How is the transfer fee calculated on a mineral lease?

- A.** The transfer fee is calculated on the amount of the full actual consideration paid therefore, or to be paid, per s. 77.21(3)(a), Stats. Below are some examples of a gravel lease for calculating the fee at the time the lease is signed:
1. Single Payment: When the lease is paid by a single payment based upon an estimate of what is to be extracted with no future payments or royalties, the fee is calculated on that amount.
 2. Royalty/Installment: When the amount of gravel to be extracted is unknown and only a down payment is made with future royalties or other type of future payments are to be made based upon extraction, the fee is initially imposed on the down payment when the document is recorded. When there is no down payment or other consideration paid when the lease is recorded and only royalties or other type payments are to be made based upon extraction, then the use of exemption s. 77.25(13), Stats. as a conveyance of real estate having a "value of \$100.00 or less" may be used on the transfer return. In both situations above, at the time of final payment or at the time a royalty is paid or an estimated amount is to be paid, you must file an "Amended Transfer Return" (see 4Q. below). Indicate the total amount paid or an estimate of the total to be paid for the mineral rights over the life of the project. You must also send a copy of the document that was originally recorded and a check in the amount of the transfer fee to the Wisconsin Department of Revenue, Bureau of Utility & Special Taxes, P.O. Box 8933, Madison, WI 53708.

4Q. I entered into a mineral lease to extract gravel for a future road project and paid a transfer fee when the lease was recorded. The road project went to another contractor and we terminated the lease. All consideration paid was returned according to the lease terms. Can I get a refund of the transfer fee I paid?

- A.** Yes, since the lease was terminated without any gravel being taken and no consideration was given, exemption s. 77.25(13), Stats., can be used. Complete an "Amended Transfer Return" and send it to the Wisconsin Department of Revenue, Bureau of Utility & Special Taxes, P.O. Box 8933, Madison, WI 53708. An "Amended Transfer Return" is completed in the same manner as the return used to record the lease except for the changes to be made and the word "Amended" is put on the top of the form. Along with the amended return, you will need to furnish a copy of the document that was recorded and a letter of explanation requesting the refund. Since the transfer fee is assessed against the grantor per s. 77.22, Stats., refunds are issued to the grantor unless specifically requested otherwise.